MOHAMAD EZAM MOHD NOR & ORS

v.

MENTERI DALAM NEGERI & ANOR

HIGH COURT MALAYA, IPOH
BALIA YUSOF JC
[CRIMINAL TRIAL NO: 44-8-02]
24 MARCH 2003

CONSTITUTIONAL LAW: *Fundamental liberties - Preventive detention - Right to counsel - Detention under Internal Security Act 1960 - Whether detainees having right to consult counsel in private - Legal consultation allowed within sight and hearing of officers of detention centre - Whether fundamental right rendered illusory - Whether unconstitutional - Federal Constitution, art. 5(3) - Internal Security Act 1960, s. 8 - Internal Security (Detained Persons) Rules 1960, r. 81(5)*

CONSTITUTIONAL LAW: *Fundamental liberties - Preventive detention - Right to counsel - Right of detainee to legal counsel - Whether subject to legitimate restrictions - Rule 81(5) Internal Security (Detained Persons) Rules 1960 - Federal Constitution, art. 5(3)*

The applicants herein had been arrested and charged in the Magistrate's Court for an offence under the Police Act 1967, and had subsequently been detained at the Tempat Tahanan Perlindungan Taiping ('the centre') under s. 8 Internal Security Act 1960 ('the Act'), pursuant to orders made thereof by the Minister of Home Affairs. While under the said detention, the applicants were accorded right of access to counsel and all of them have had numerous consultations with their respective counsel, albeit that the same were only allowed to be convened within the sight and hearing of the officers of the centre, and not otherwise. The applicants averred that the procedure as adopted by the centre hereof amounted to an illegitimate restraint to their right to consult their counsel in confidence, and was in breach of their fundamental rights as enshrined in art. 5(3) of the Federal Constitution, and in the circumstances, applied for declarations to the effect. Before the learned judge, the applicants further argued that r. 81(5) of the Internal Security (Detained Persons) Rules 1960 ('the Rules'), which governed visitation rights of persons detained under the Act, had no application to visits by counsel, and was in any case *ultra vires* art. 5(3) of the Federal Constitution. The respondents maintained that their actions were in accordance with established procedures as provided for under the Rules.

Held:

[1] There was no merit in the argument that r. 81(5) is not applicable to visits by legal advisers of the detained persons. Considering the plain words used in the rule, there is no justification to hold that the rule should be limited only to visits other than visits by legal advisers. Clearly too, the rule gave a discretion to the Superintendant, in appropriate cases, to dispense with any of the requirements mentioned therein. (pp 465 h-i & 466 a)

[2] There was likewise no merit in the argument that the applicants' right to consult their counsel had been denied or made ineffective or illusory. Considering the numerous occasions of consultations that had been accorded to the applicants and the battery of lawyers representing them that came in and out of the centre seeking appointments with them, the applicants had clearly been pursuing the fundamental rights accorded them in art. 5(3) of the Constitution. (p 467 g)

[3] There was no evidence that the respondents had breached art. 5(3) of the Constitution. The applicants had failed to show that the respondents had deliberately or in bad faith obstructed them from exercising their rights under the article. On the contrary, the respondents, by being present in sight and hearing during the visits to the detainee, were merely exercising their statutory duty as provided for in the Rules. (pp 467 h & 468 d)

[4] The right to consult a legal practitioner under art. 5(3) must be subject to certain legitimate restrictions. Such restrictions are necessary for the balancing of the interest of the detainee and that of justice and the public. Justice, after all, does not mean only for the accused but also for the state. (p 468 f-g & h)

[4a] The codification of the rule in the style of r. 81(5) is one such means where the interest of the state is given due consideration in relation to those accused deemed to be a threat to the security of the nation. The provision, couched as it were in the form of certain curtailment to the right to communicate confidentially with a legal adviser, was fashioned in clear and express words. (p 469 d-g)

Obiter:

[1] It is outside the purview of this court to consider the harshness or the unjustness of the provisions of r. 81(5) of the Rules. It therefore serves no purpose for this court to embark upon such venture. (p 470 d)

[Application dismissed.]

Case(s) referred to:

Assa Singh v. Menteri Besar Johor [1969] 2 MLJ 30 ***(refd)***

Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 ***(refd)***

Hashim Saad v. Yahya Hashim & Anor [1977] 2 MLJ 116 ***(refd)***

Loh Kooi Choon v. Government of Malaysia [1977] 2 MLJ 187 ***(refd)***

Merdeka University Bhd v. Government of Malaysia [1981] 2 MLJ 356 ***(refd)***

Moti Bai v. The State AIR [1954] Rajasthan 241 ***(refd)***

Ooi Ah Phua v. Officer in Charge Criminal Investigation, Kedah/Perlis [1975] 2 MLJ 198 ***(foll)***

PP v. Zulkifle Hassan [1990] 2 MLJ 215 SC ***(refd)***

R v. Secretary of State for the Home Department, ex p Daly [2001] 3 All ER 433 ***(refd)***

Ramli Salleh v. Inspector Yahya Hashim [1973] 1 MLJ 54 ***(refd)***

Smt Maneka Ghandi v. Union of India AIR [1978] SC 597 ***(refd)***

Sundar Singh v. Emperor AIR [1930] Lahore 945 ***(foll)***

Tan Teck Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

Teh Cheng Poh v. PP [1978] 1 MLJ 30 ***(refd)***

Theresa Lim Chin Chin & Ors v. Inspector General of Police [1988] 1 MLJ 293 ***(foll)***

United Malayan Banking Corporation v. Cheong Yong Yin [2001] 2 CLJ 31 CA ***(refd)***

Yap Peng Seng v. Menteri Kementerian Sumber Manusia Malaysia [1998] 5 CLJ 804 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 25

Federal Constitution, art. 5(3)

Internal Security Act 1960, ss. 8(4), 73

Internal Security (Detained Persons) Rules 1960, r. 81(5)

Police Act 1967, s. 27(5)(a)

Rules of the High Court 1980, O. 53 r. 3

For the applicants - Malek Imtiaz Sarwar; M/s Malek Imtiaz Sarwar & M Moganambal (R Sivarasa); M/s Daim & Gamany

For the respondent - Kamaluddin Mohd Said DPP

Reported by WA Sharif

JUDGMENT

Balia Yusof JC:

The five applicants are currently held under detention at the Tempat Tahanan Perlindungan Taiping under s. 8 of the Internal Security Act 1960 (hereinafter referred to as the said Act) through orders made by the Minister of Home Affairs. The first, second and third applicants were originally detained by the police under s. 73 of the said Act on 10 April 2001 while the fourth and fifth applicants were detained on 24 April 2001 and 20 April 2001 respectively. The detention orders under s. 8 of the said Act on the first, second and third applicants are dated 2 June 2001 (exh. ME1 pp. 1-19 encl. 4) whereby the said applicants were detained for a period of two years effective from the said date while the detention orders in respect of the fourth and fifth applicants on the same terms were issued on 13 June 2001 (exh. ME1 pp. 20-35 encl. 4).

Between September 1999 and March 2000 the five applicants were on different dates, arrested and charged for an offence under s. 27(5)(a) of the Police Act 1967 at the Kuala Lumpur Magistrates' Court. It is in respect of this criminal charge against each of the applicant that prompted them to file the present application seeking for the following reliefs:

1. Perintah bahawa Peraturan 81(5) Kaedah-Kaedah & Peraturan yang dibuat di bawah Akta Keselamatan Dalam Negeri, 1960 adalah *ultra vires* kepada Fasal 5 (3) Perlembagaan Persekutuan;

   dan/atau

2. Perintah bahawa Pemohon-Pemohon adalah berhak untuk rundingcara secara sulit dan persendirian dengan peguam-peguam mereka tanpa sebarang sekatan/gangguan; dan/atau

3. Perintah bahawa Pemohon-Pemohon berhak berunding dengan orang-orang selain daripada peguam-peguam mereka dalam keadaan sulit, persendirian dan tanpa sebarang sekatan/gangguan yang merupakan relevan kepada dan/ataupun perlu untuk persediaan pembelaan masing-masing dalam apa jua prosiding jenayah yang dimulakan terhadap mereka; dan/atau

4. Perintah bahawa Pegawai Yang Menjaga (PYM), Tempat Tahanan Perlindungan Taiping diarahkan supaya membenarkan Pemohon-Pemohon berunding dengan peguam-peguam mereka dalam keadaan sulit, persendirian dan tanpa sebarang sekatan/gangguan;

   dan atau

5. Perintah bahawa Pegawai Yang Menjaga, Tempat Tahanan Perlindungan Taiping diarahkan supaya membenarkan Pemohon-Pemohon berunding dengan orang-orang selain daripada peguam-peguam mereka dalam keadaan sulit, persendirian dan tanpa sebarang sekatan/gangguan yang merupakan relevan kepada dan/ataupun perlu untuk persediaan pembelaan masing-masing dalam semua prosiding jenayah yang dimulakan terhadap mereka termasuk kes-kes berikut

   a. E 83-1276-2001 di Mahkamah Majistret 1B, Kuala Lumpur;

   b. E 83-1277-2001 di Mahkamah Majistret 1B, Kuala Lumpur;

   c. E 83-1278-2001 di Mahkamah Majistret 1B, Kuala Lumpur;

   d. E 83-1279-2001 di Mahkamah Majistret 1A, Kuala Lumpur;

   e. E 83-1280-2001 di Mahkamah Majistret 1B, Kuaa Lumpur; dan

   f. E 83-1281-2001 di Mahkamah Majistret 1B, Kuala Lumpur;

   dan/atau

6. Perintah atau arahan lain yang selanjutnya difikirkan patut dibuat atau diberi oleh Mahkamah yang Mulia ini.

This application was made by way of a notice of motion in the form of a criminal application supported by an affidavit jointly sworn by the five applicants (encl. 3).

From the outset, at the commencement of the hearing of the said application Encik Kamaluddin Said, learned senior federal counsel appearing for the Respondents put up a preliminary objection contending that the reliefs as prayed in the above prayers are declaratory in nature namely prayers 1, 2 and 3, while prayers No. 4 and 5 are actually in the form of a mandamus. It is the contention of the respondents that O. 53 r. 3 of the Rules of the High Court applies and leave of this court ought to be obtained first. (*Yap Peng Seng v. Menteri Kementerian Sumber Manusia Malaysia* [1998] 5 CLJ 804). The learned senior federal counsel further submitted that although this is a criminal application, in substance the reliefs sought for are civil in nature and therefore the provisions of the High Court Rules 1980 should apply.

Learned counsel for the applicants on the other hand argued that being a criminal application, O. 53 of the Rules of the High Court does not apply. Enclosure 3 is the proper form of application to be made and it is a mode of action which would normally apply in seeking reliefs of the kind prayed for in the said enclosure. In his further submission it was contended that s. 25 of the Courts of Judicature Act 1964 must be given a liberal and wide

interpretation and ought not to be confined to civil cases only. This court has such power and discretion to entertain this application and in the interest of justice this application should not be struck out merely on procedural defect. (*Teh Cheng Poh v. Public Prosecutor* [1978] 1 MLJ 30, *United Malayan Banking Corporation v. Cheong Yong Yin* [2001] 2 CLJ 31, *PP v. Zulkifle b. Hassan* [1990] 2 MLJ 215).

Having considered the points raised by the parties and their respective submissions, I am of the considered view that on the authorities aforesaid, there is no merit in the objection raised by the respondents and hold that this court has the power and jurisdiction to hear this application. The preliminary objection raised by the respondents was accordingly dismissed and parties were ordered to proceed on the merits of the application.

On various occasions and at different dates, applications were made by the applicants' counsel for a right of access and to have consultation with the applicants in private. The said requests were denied by the Pegawai Yang Menjaga Tempat Tahanan Perlindungan Taiping except for a meeting on 21 June 2001 whereby the counsel was allowed to have consultation with the applicants in the presence of the officers from the detention center but not within their hearing. As a result of this it was further alleged by the applicants that they were denied of their rights to instruct their counsel in full confidence and without any restriction. The applicants' joint affidavit also stated that they have jointly been charged in criminal cases in the Kuala Lumpur Magistrates' Court and there is a necessity that they should be allowed to consult their counsel together in order to enable them to prepare for their defence against the said criminal charges. Such denial of their right to consult their counsel together and in private, in their contention, is a breach of their fundamental rights as enshrined in art. 5(3) of the Federal Constitution.

The respondents contend that the applicants were never denied access to their counsel and were never prevented from giving any instructions to their counsel. The respondents in the affidavit of the Pegawai Yang Menjaga Tempat Tahanan Perlindungan Taiping (encl. 6) avers that there were instances when the applicants were given the opportunity to see their counsel in private and in groups and that there were many lawyers from various legal firms having consultations with the applicants. It is further contended by the respondents that the action of the respondents were in accordance with established rules and procedures as provided for under the Internal Security (Detained Persons) Rules 1960.

The main thrust of the applicants' contention in this application is that r. 81(5) of the Internal Security (Detained Persons) Rules 1960 is *ultra vires* art. 5(3) of the Federal Constitution which forms the very first prayer in this application and seeking this court to so declare. In their views, the applicants contend that they have the undeniable right to consult their counsel in private without any restriction and/or interference from any quarters. It is pertinent at this stage to reproduce r. 81 of the Internal Security (Detained Persons) Rules 1960 which provides as follows:

> 81(1) (a) A detained person shall, consistent with the proper discipline of the place of detention and subject as hereinafter provided, be entitled to visits from his relatives and legal adviser.
>
> (b) A detained person may, consistent with the proper discipline of the place of detention and subject as hereinafter provided, with the express permission of the Superintendent whose decision shall, subject to an appeal to the Officer-in-Charge, be final, receive visits from persons other than his relatives and legal adviser.
>
> (2) No detained person shall, except with the express permission of the Superintendent, receive more than one visit a week.
>
> (3) Not more than two persons shall be admitted to visit a detained person at any one time.
>
> (4) No visit shall last more than 30 minutes.
>
> (5) A Superintendent or an officer, or in the case of a visit to a female, a wardress, shall, together with an interpreter in any case where such officer does not understand the language spoken, be in sight and hearing during the whole of any visit to a detained person unless the Superintendent by an order in writing sees fit to dispense with any of the above requirements.

Before me, it is submitted that the abovementioned rule has no application to visits by counsel of the detained persons and it is a general rule governing visitation rights. Visits by legal advisers must be deemed to be excluded. It is further alluded by counsel for the applicants that art. 5(3) of the Federal Constitution should be given a liberal interpretation and a broad meaning. Using the normal principles in the cannons of interpretations, I found no merit in the applicants' argument that r. 81(5) should not be applicable to visits by legal advisors. Considering the plain meaning of the words used in the abovementioned rule, I find no justification to hold that the said rule should be limited to only visits other than visits by legal advisors. To do so would in my view be importing words into the statute, a venture which this court is not competent to do. At the same time I am of the view that to exclude visits by

legal advisers, despite the clear words in the said rule would be doing violence to the same. The said rule also gives a discretion to the Superintendent, in appropriate cases, to dispense with any of the requirements mentioned therein in writing. On the evidence available before me from the affidavits filed by both the applicants and the Pegawai Yang Menjaga Tempat Tahanan Perlindungan Taiping, it is an undeniable fact that the applicants were allowed to have consultations with their counsel with the presence of officer from the center. There is also evidence to suggest that such consultations were either made in groups or individually. The record of visits as shown in exh. "ABM1" to the affidavit of Ab. Basir b. Mohamad (encl. 6) is clearly indicative of this fact.

The issue before me is whether r. 81(5) of the Internal Security (Detained Persons) Rules 1960 is *ultra vires* art. 5(3) of the Federal Constitution. In determining the issue it is of utmost importance to ascertain whether the rights of the applicants under art. 5(3) has been breached. Article 5(3) of the Federal Constitution provides:

> When a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

It has been urged before me that the above provision of the Federal Constitution in particular the word "consult" must be liberally interpreted and be given a broad meaning in line with the Court of Appeal's decision in *Tan Teck Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771. In essence the applicants are complaining that they have not been given the right to consult their counsel in private and not on the denial of right to consult *per se*. On the facts before me and on the affidavit evidence produced, I found it hard to discern as to how the above provision of the Federal Constitution has been breached. From the exh. "ABM1" to the affidavit in encl. 6, I found that numerous consultations were accorded to the applicants with their respective counsels. I shall postulate those facts and instances as below:

(1) The respondent's reply in encl. 6 indicating that consultation in groups were accorded to the applicants' as exhibited at p. 71 of encl. 4, the joint affidavit of the applicants.

(2) Exhibit ME 3 p. 62 of encl. 4, a letter from the applicants' solicitors to the Pegawai Yang Menjaga Tempat Tahanan Perlindungan Taiping acknowledging communication in private between the solicitors and their clients.

(3) Exhibit "ABM1" in encl. 6 indicating that no less than 35 lawyers were accorded visitation rights to have consultations with the applicants.

(4) Between 8 June 2001 and 17 April 2002, the dates indicated in the said exh. "ABM1" there were 47 instances where consultations by the various lawyers from the various legal firms (eleven of them altogether) with the applicants were recorded.

On my further perusal of exh. "ABM1", it also indicates that on a certain day the applicants were allowed to have consultation with different counsels and at least on four different occasions the first, second and third applicants were allowed to consult different counsel either individually or in groups. In terms of the numbers of visits by counsel to the applicants, the same exhibit further reveals that the first applicant had 38 visits, the second applicant had 40, the third applicant, 28, the fourth applicant, 30 and the fifth applicant had 26 visits between 8 June 2001 and 17 April 2002. All these exhibits were made by the applicants' counsels. On those facts alone can one say that the applicants rights under art. 5(3) has been violated?

In determining whether r. 81(5) has violated art. 5(3), I find comfort in citing our Supreme Court case of *Dewan Undangan Negeri Kelantan & Anor v. Nordin b. Salleh & Anor* [1992] 2 CLJ 1125; ([1992] 1 CLJ (Rep) 72) where the court adopted the test propounded by the Indian Supreme Court case of *Smt Maneka Ghandi v. Union of India* AIR [1978] SC 597. At p. 1133 (p. 82) Abdul Hamid Omar LP said:

> We share Dr. Anand's view taken from the Supreme Court decision in Smt Maneka Ghandi's case, that in testing the validity of state action with regard to fundamental rights, what the court must consider is whether it directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise 'inefective or illusory'.

On the facts and circumstances of the case presented before me, I find no justification in holding that the right to consult their legal advisers has been made ineffective or illusory. Considering the numerous occasions of consultation that has been accorded to the applicants and the battery of lawyers representing and coming in and out of the detention center seeking appointments with them merely point to the fact that the applicants were actually pursuing their fundamental rights in accordance with the said art. 5(3).

Having regard to the facts adumbrated above, there certainly can be no denial of the fact that the applicants were never denied of their right to consult a legal practitioner of their choice. Up to this point, I am not satisfied that there

is evidence to indicate that the respondents has breached art. 5(3). In *Theresa Lim Chin Chin & Ors v. Inspector General of Police* [1988] 1 MLJ 293, the Supreme Court said:

> When should a detainee arrested under Section 75 of the Internal Security Act be allowed to exercise his right under Article 5(3) of the Constitution to consult a counsel of his choice? We would reiterate what was held by the Federal Court in *Ooi Ah Phua v. Officer in Charge Criminal Investigations, Kedah/Perlis*. In other words the matter should best be kept to the good judgment of the authority as and when such a right not interfere with police investigation. **To show breach of Article 5(3) an applicant has to show that the police had deliberately and with bad faith obstructed a detainee from exercising his right under the article.** (emphasis added)

Applying the above test on the breach of art. 5(3), I am of the considered view that the applicants has failed to show that the respondents had deliberately and in bad faith obstructed them from exercising their rights under the article. On the contrary, the respondents by being present in sight and hearing during the visits to the detainee at the detention center are merely exercising their statutory duty as provided for in the rules.

For such consultations to be effective, it is submitted by the applicants that it must be free from any form of interference and restrictions. In the instant case, it is contended that consultation with the presence and within the hearing of the officers from the detention center makes such right illusory. In support of such contention, the case of *Moti Bai v. The State* AIR 1954 Rajasthan 241 was referred to where the provision of art. 22(1) of the Indian Constitution which have the same effect as our art. 5(3) were in issue. In my view, after having considered the list of authorities on the application of art. 5(3) of the Federal Constitution, there is a consensus of view that the right to consult a legal practitioner is subject to certain legitimate restrictions. (*Assa Singh v. Menteri Besar Johor* [1969] 2 MLJ 30, *Ramli b. Salleh v. Inspector Yahya b. Hashim* [1973] 1 MLJ 54 and *Theresa Lim Chin Chin & Ors. v. Inspector General of Police (supra))*. In *Ooi Ah Phua v. Officer in Charge Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 Suffian LP observed the following:

> With respect I agree that the right of an arrested person to consult his lawyer begins from the moment of arrest … A balance has to be struck between the right of arrested person to consult his lawyer on the one hand and on the other the duty of the police to protect the public … The interest of justice is as important as the interest of the arrested person …

His Lordship further referred and concurred with the view of Blide J in *Sundar Singh v. Emperor* AIR [1930] Lahore 945 who said at p. 947:

> The right of a prisoner to have access to legal advice must of course be subject to such legitimate restrictions as may be necessary in the interests of justice in order to prevent any undue interference with the course of investigation.

Still on the issue of legitimate restriction, The House of Lords in *R v. Secretary of State for the Home Department, ex parte Daly* [2001] 3 AER 433 had this to say at p. 437:

> Among the rights which, in part at least, survive are three important rights, closely related but free standing, each of them calling for appropriate legal protection: the right of access to a court; the right of access to legal advice; and the right to communicate confidentially with a legal adviser under the seal of legal professional privilege. Such rights may be curtailed only by clear and express words, and then only to the extent reasonably necessary to meet the ends which justify the curtailment.

In my view the provisions of r. 81(5) of the Internal Security (Detained Persons) Rules 1980 is couched in the form of certain curtailment to the right to communicate confidentially with a legal adviser and they are fashioned in clear and express words. As suggested in the earlier part of my judgment, the right of a detainee under art. 5(3) is not without restrictions and such restrictions are made and only deemed necessary in balancing between the interest of the detainee and the interest of justice and to the public. Lest one forget, it must always be borne in mind that justice does not mean only for the accused, it also means the interest of the state. As Raja Azlan Shah FJ (as His Majesty then was) in *Hashim b. Saad v. Yahya b. Hashim & Anor* [1977] 2 MLJ 116 at p. 118:

> We often think of the administration of justice simply as it relates to the protection of the rights of the accused person, that is, to know the charge against him, to be represented by Counsel, to be confronted by witnesses, to have an impartial trial. But justice does not mean only for the accused; it also means the interests of the state, and not enough is paid to the interests of the state.

Echoing those words, I am of the view that the codification of the rule in the style of r. 81(5) of the Internal Security (Detained Persons) Rules 1960 is one such means where the interest of the state is given due consideration in relation to those accused and deemed to be a threat to the security of the nation.

Another aspect which merits consideration of this court touches on the issue involving the interpretation of the said rule. In construing r. 81(5), this court should not go further than what was said by Raja Azlan Shah FJ (as His Majesty then was) in *Loh Kooi Choon v. Government of Malaysia* [1977] 2 MLJ 187. Speaking for the Federal Court at p. 188 it was stated:

The question whether the impugned Act is 'harsh and unjust' is a question of policy to be debated and decided by Parliament, and therefore not meant for judicial determination. To sustain it would cut very deeply into the very being of Parliament. Our courts ought not to enter the political thicket, even in such a worthwhile cause as the fundamental rights guaranteed by the constitution, for as was said by Lord Menaghten in *Vacher & Sons Ltd. v. London Society of Compositors* [1913] AC 107:

> Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the legislature.

Following those words, it is certainly outside the purview of my power to consider the harshness or the unjustness of the provisions of r. 81(5) of the Internal Security (Detained Persons) Rules 1960. It serves no purpose for this court to embark on such an adventure and most of all I am not competent to dwell on the subject matter. It must also be noted that r. 81 is made under the provisions of s. 8(4) of the Internal Security Act 1960 "for the dicipline and interest of persons detained therein" and the Minister is empowered "to make different rules for different places of detention". It seems clear to me that by those provisions, a certain degree of justification is emplaced with the authorities in coming up with different set of rules for different places of detention and in my view too different considerations must also have been considered by the authorities in framing r. 81. Again it is outside the purview of my powers to cavil at those justifications or considerations.

In the course of the submissions by both counsels in this matter, I was invited to have regard to international standards in determining the scope and extent of art. 5(3). My attention was specifically drawn to Principle 18 in the Body of Principles For the Protection of All Persons Under Any Form of Detention or Imprisonment, a document adopted by the United Nations General Assembly which provides as follows:

> Principle 18.
>
> 1. A detained or imprisoned person shall be entitled to communication and consult with his legal counsel.
>
> 2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.

5. Communication between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

In my opinion, such principles are only declaratory in nature and I find comfort in sharing the same views as expressed by Siti Norma Yaacob FCJ in the case of:

1. *Mohamad Ezam bin Mohd. Noor v. Ketua Polis Negara*, Mahkamah Persekutuan (Bidang Kuasa Jenayah)
   BIL: 05-8-2001 (W);

2. *Raja Petra bin Raja Kamarudin v. Ketua Polis Negara*, Mahkamah Persekutuan (Bidang Kuasa Jenayah)
   BIL: 05-9-2001 (W);

3. *Chua Tian Chang v. Ketua Polis Negara*, Mahkamah Persekutuan (Bidang Kuasa Jenayah)
   BIL: 05-10-2001 (W);

4. *Hishamudin bin Rais v. Ketua Polis Negara*, Mahkamah Persekutuan (Bidang Kuasa Jenayah)
   BIL: 05-11-2001 (W)

5. *Saari bin Sungib v. Ketua Polis Negara*, Mahkamah Persekutuan (Bidang Kuasa Jenayah)
   BIL: 05-12-2001 (W);

where it was stated:

> Since such principles are only declaratory in nature, they do not, I consider, have the force of law or binding on Member States. If the United Nations wanted those principles to be more than declaratory, they could have embodied them in a convention or a treaty to which Member States can ratify or accede to and those principles will then have the force of law.

Much earlier, the international standards as set by the 1948 Declaration was described as a non legally binding instrument and merely a statement of principles devoid of any obligatory character and is not part of our municipal law in *Merdeka University Berhad v. Government of Malaysia* [1981] 2 MLJ 356. In any event, it is also a recognized standard that certain instructions and even suspension of such right may be imposed in certain circumstances to be specified by law or lawful regulations when it is considered indispensable by a judicial or other authority in order to maintain security and good order (Principle 18 (3)) and I find that r. 81(5) is in accord with this principle. On those authorities, I consider that the argument on whether r. 81 is in accord with the principles stated above is purely academic and merits no further deliberation.

For the reasons stated above, I dismiss the application.